

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1648 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

HALIMABIBI W/O GULAMBHAI RAHEMANBHAI SINCE DECEASED

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioners

MR TH SOMPURA, A.G.P. for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/04/98

ORAL JUDGEMENT

Rule. Mr. T.H.Sompura, learned Assistant
Government Pleader waives service of notice of rule on
behalf of the respondents.

At the request of learned advocates appearing for the parties, the petition is heard today.

2. By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioners have prayed to quash and set aside order dated February 22, 1993 passed by the Competent Authority and Additional Collector, U.L.C. Surat by which land admeasuring 39520 sq.mts. out of total holdings of deceased Halimabibi is declared to be excess land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 ("the Act" for short. The petitioners have also prayed to set aside and quash the order dated November 2, 1996 rendered by the Urban Land Tribunal, Ahmedabad by which the order dated February 22, 1993 passed by the Competent Authority is upheld.

3. Deceased Halimabibi, resident of village Indarpura, Taluka : Gandevi, Surat was holding survey nos. 59 & 88 situated at village Tunki as well as survey nos. 7/1373-A, 7/1373-B and 3/1149 situated in Surat city when the Act came into force on February 17, 1976. Deceased Halimabibi, therefore, submitted statement before the Competent Authority as required by section 6(1) of the Act. After submission of statement, draft statement was prepared and served by the Competent Authority, to deceased Halimabibi against which she filed objections. The objections which were raised by deceased Halimabibi, are enumerated in detail in the order dated February 22, 1993 which was passed by the Competent Authority and, therefore, it is not necessary to refer to them in detail at this stage. From the said order, it is evident that several notices were served to deceased Halimabibi as required by section 8(4) of the Act, but neither she nor her learned advocate remained present before the Competent Authority. The Competent Authority, therefore, after taking into consideration relevant facts, by an order dated February 22, 1993 held that deceased was holding 41020 sq.mts. land and declared 39520 sq.mts. land as excess land belonging to her. A xerox copy of order passed by the Competent Authority is produced by the petitioner at Annexure-A to the petition. Deceased Halimabibi thereafter preferred an appeal before the Urban Land Tribunal, Ahmedabad. During the pendency of appeal, Halimabibi expired on September 27, 1996 which is quite evident from the xerox copy of Birth Certificate issued by the Competent Authority of Surat Municipal Corporation produced at Annexure-C to the petition. The fact of death of Halimabibi was never brought to the notice of Urban Land Tribunal and notice issued by Urban Land Tribunal to deceased Halimabibi returned unserved.

The appellate authority by an order dated November 2, 1996 rejected the appeal filed by deceased Halimabibi. The appellate order is produced by the petitioner at Annexure-B to the petition. The petitioners, who are heirs and legal representatives of deceased Halimabibi, have contended in the present petition that the appellate order, which is passed against dead person being nullity, deserves to be set aside. It is also averred in the petition that sufficient opportunity of being heard was not given to deceased Halimabibi by the Competent Authority and Additional Collector, U.L.C., Surat and, therefore, order passed by the Competent Authority also deserves to be set aside. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

4. The petition was placed before Court for admission hearing on March 6, 1998 and after hearing the learned Counsel for the petitioners, notice was issued making it returnable on March 23, 1998.

5. Mr. P.M.Bhatt, learned Counsel for the petitioners submitted that the appellate authority has passed order against a dead person which is a nullity and, therefore, the order produced at Annexure-B should be set aside. It was pleaded on behalf of the petitioners that sufficient opportunity of being heard was not afforded to deceased Halimabibi by the Competent Authority, nor objections raised by her to the draft statement were taken into consideration by the Competent Authority and, therefore, the order produced at Annexure-A also deserves to be set aside.

6. Mr. T.H.Sompura, learned A.G.P. contended that sufficient opportunity of being heard was given to deceased Halimabibi by the Competent Authority as well as by the appellate authority and as she has failed to avail of the opportunity of being heard afforded to her by the authorities, the petition should not be entertained and should be dismissed.

7. After filing of appeal, deceased Halimabibi had expired and the appeal was decided against Halimabibi without noticing the fact that she had expired during the pendency of appeal. It hardly needs to be emphasised that the order passed against a dead person is a nullity. Similar such view has been taken in the case of Heirs of deceased Durlabhbhai Becharbhai Patel vs. State of Gujarat & ors. Special Civil Application no.1003/97, decided on February 14, 1997 by Court (Coram : S.D.Dave,J.) with reference to the order passed by the

competent authority under the provisions of Urban Land (Ceiling & Regulation) Act, 1976. Therefore, the appellate order deserves to be set aside. From the contents of order which is produced at Annexure-A to the petition, it is evident that deceased Halimabibi had raised about eight objections to the draft statement which was served by the Competent Authority on her. The order passed by the Competent Authority does not indicate that all those objections were taken into consideration by the Competent Authority before declaring 39520 sq.mts. land as excess land under the provisions of the Act. Apart from that, there is no manner of doubt that the said order was passed without hearing deceased Halimabibi or her advocate. Having regard to the totality of the facts and circumstances of the case, I am of the view that order Annexure-A deserves to be set aside. On overall view of the matter, I am of the opinion that interest of justice would be served if the matter is remanded to the Competent Authority & Additional Collector, U.L.C., Surat for fresh determination after giving an opportunity of being heard to the petitioners.

For the foregoing reasons, the petition succeeds. The orders which are produced at Annexures A & B are hereby set aside and quashed. The matter is remanded to the Competent Authority and Additional Collector, U.L.C., Surat for fresh determination. The Competent Authority is hereby directed to give notice to the petitioners at the addressed mentioned in the cause title of present petition. As the matter is fairly old, the petitioners are directed to co.operate in the hearing of the matter which may take place before the Competent Authority. The Competent Authority shall take into consideration the submissions which may be made by the petitioners and pass appropriate orders in accordance with law as early as possible and preferably within two months from the date of receipt of writ. Rule is made absolute accordingly, with no order as to costs.

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